



1 division.

2 C. The utility division shall represent the public  
3 interest in utility matters before the commission and may  
4 present testimony and evidence and cross-examine witnesses. In  
5 order to represent the public interest, the utility division  
6 shall present to the commission its beliefs on how the  
7 commission should fulfill its responsibility to balance the  
8 interests of consumers and investors.

9 D. The utility division shall perform the functions  
10 of the telecommunications department of the former state  
11 corporation commission and staff functions, not including  
12 advisory functions, of the former New Mexico public utility  
13 commission.

14 E. Utility division staff shall not have ex parte  
15 communications with commissioners or a hearing examiner  
16 assigned to a utility case, except as expressly permitted  
17 pursuant to Section 8-8-17 NMSA 1978. "

18 Section 2. Section 8-8-14 NMSA 1978 (being Laws 1998,  
19 Chapter 108, Section 14) is amended to read:

20 "8-8-14. HEARING EXAMINERS. --

21 A. The commission may appoint a commissioner or a  
22 hearing examiner to preside over any matter before the  
23 commission, including rulemakings, adjudicatory hearings and  
24 administrative matters.

25 B. Except as provided in the New Mexico Insurance

1 Code, a hearing examiner shall provide the commission with a  
 2 recommended decision on the matter assigned to him, including  
 3 findings of fact and conclusions of law. The recommended  
 4 decision shall be provided to the parties, and they may file  
 5 exceptions to the decision prior to the final decision of the  
 6 commission.

7 C. When the commission has appointed a hearing  
 8 examiner to preside over a matter, at least one member of the  
 9 commission shall, at the request of a party to the proceedings,  
 10 attend oral argument. "

11 Section 3. Section 8-8-17 NMSA 1978 (being Laws 1998,  
 12 Chapter 108, Section 17) is amended to read:

13 "8-8-17. EX PARTE COMMUNICATIONS. --

14 A. A commissioner shall not initiate, permit or  
 15 consider a communication directly or indirectly with a party or  
 16 his representative outside the presence of the other parties  
 17 concerning a pending rulemaking after the record has been  
 18 closed or a pending adjudication.

19 B. A hearing examiner shall not initiate, permit or  
 20 consider a communication directly or indirectly with a party or  
 21 his representative outside the presence of the other parties  
 22 concerning a pending rulemaking or adjudication.

23 C. Notwithstanding the provisions of Subsections A  
 24 and B of this section, the following ex parte communications  
 25 are permitted:

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1 (1) where circumstances require, ex parte  
2 communications for procedural or administrative purposes or  
3 emergencies that do not deal with substantive matters or issues  
4 on the merits are allowed if the commissioner or hearing  
5 examiner reasonably believes that no party will gain an  
6 advantage as a result of the ex parte communication and the  
7 commissioner or hearing examiner makes provision to promptly  
8 notify all other parties of the substance of the ex parte  
9 communication;

10 (2) a commissioner may consult with another  
11 commissioner or with advisory staff whose function is to advise  
12 the commission in carrying out the commissioner's rulemaking or  
13 adjudicative responsibilities;

14 (3) a hearing examiner may consult with the  
15 commission's advisory staff; ~~and~~

16 (4) a commissioner or hearing examiner may  
17 obtain the advice of a nonparty expert on an issue raised in  
18 the rulemaking or adjudication if the commissioner or hearing  
19 examiner gives notice to the parties of the person consulted  
20 and the substance of the advice and affords the parties  
21 reasonable opportunity to respond; and

22 (5) a party to a proceeding may consult with  
23 the commission's advisory staff.

24 D. A commissioner or hearing examiner who receives  
25 or who makes or knowingly causes to be made a communication

1 prohibited by this section shall disclose it to all parties and  
2 give other parties an opportunity to respond.

3 E. Upon receipt of a communication knowingly made  
4 or caused to be made by a party to a commissioner or hearing  
5 examiner in violation of this section, the commissioner or  
6 hearing examiner may, to the extent consistent with the  
7 interests of justice and the policy of the underlying statutes,  
8 require the party to show cause why his claim or interest in  
9 the proceeding should not be dismissed, denied, disregarded or  
10 otherwise adversely affected on account of the violation of  
11 this section. "

underscoring material = new  
[bracketed material] = delete